

**9VAC25-590-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action or compensation, ~~or both~~, for bodily injury or property damage, or both, neither expected nor intended by the tank owner or operator.

"Annual aggregate" means the maximum financial responsibility requirement that an owner or operator is required to demonstrate annually.

"Board" means the State Water Control Board.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; but not including any death, disablement, or injuries covered by workers' compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Corrective action" means all actions necessary to abate, contain and cleanup a release from an underground storage tank to mitigate the public health or environmental threat from such

releases and to rehabilitate state waters in accordance with Parts V (9VAC25-580-190 et seq.)

and VI (9VAC25-580-230 et seq.) of 9VAC25 Chapter 580, Underground Storage Tanks:

Technical Standards and Corrective Action Requirements. The term does not include those actions normally associated with closure or change in service as set out in Part VII (9VAC25-580-320 et seq.) of 9VAC25 Chapter 580 or the replacement of an underground storage tank.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10 K report submitted to the U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural ~~Electrification Administration~~ Utilities Service; or (iv) a year-end financial statement authorized under 9VAC25-590-60 B or C of this chapter. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Gallons of petroleum pumped" means either the amount pumped into or the amount pumped out of a petroleum underground storage tank.

"Group self-insurance pool" or "pool" means a pool organized by two or more owners and/or operators of underground storage tanks for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by §62.1-44.34:12 of the Code of Virginia.

"Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require corrective action or to recover the costs of corrective action, or to collect civil

penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state, or other special purpose government which provides essential services.

"Member" means an owner or operator of an underground storage tank which has entered into a member agreement and thereby becomes a member of a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

NOTE: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person, who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Owner" or "operator," when the owner or operator are separate parties, refers to the person who is obtaining or has obtained financial assurances.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means a person that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in 9VAC25-590-60 through 9VAC25-590-120 and 9VAC25-590-250, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored;

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.),

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.), or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Stormwater or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"9VAC25-580-~~10 et seq.~~" means the Underground Storage Tanks: Technical Standards and

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §1, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-20. Applicability.**

A. This chapter applies to owners and operators of all petroleum UST systems regulated under 9VAC25-580-~~10 et seq.~~, except as otherwise provided in this section.

B. Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in 9VAC25-590-30.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further demonstrate an ability to provide financial responsibility under this chapter.

D. The requirements of this chapter do not apply to owners and operators of any UST system described in 9VAC25-580-20 B or C.

E. If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §2, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-30. Compliance dates.**

Owners of petroleum underground storage tanks are required to comply with the requirements of this chapter by the following dates:

1. All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural ~~Electrification Administration~~ [Utilities Service](#): January 24, 1989; except that compliance for owners and operators using the mechanisms specified in 9VAC25-590-70 or 9VAC25-590-90 is required by July 24, 1989.
2. All petroleum marketing firms owning 100-999 USTs: October 26, 1989;
3. All petroleum marketing firms owning 13-99 USTs at more than one facility: April 26, 1991;
4. All petroleum UST owners not described in subdivision 1, 2, or 3 of this section, excluding local government entities: December 31, 1993;

5. All local government entities (including Indian tribes) not included in subdivision 6 of this section: February 18, 1994; or

6. Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of 9VAC25-580-~~10 et seq.~~: December 31, 1998.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §3, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-40. Amount and scope of financial responsibility requirement.**

A. Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in the following per-occurrence amounts:

1. For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

2. For all other owners or operators of petroleum underground storage tanks; \$500,000.

B. Owners and operators of petroleum underground storage tanks shall demonstrate financial

responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

1. For owners and operators of 1 to 100 petroleum underground storage tanks, \$1 million; and
2. For owners and operators of 101 or more petroleum underground storage tanks, \$2 million.

C. Owners and operators of petroleum underground storage tanks may use the Virginia Petroleum Storage Tank Fund in combination with one or more of the mechanisms specified in 9 VAC 25-590-60 through 9 VAC 25-590-110 and 9 VAC 25-590-250 to satisfy the financial responsibility as required by this section. The Fund may be used to demonstrate financial responsibility for the owner or operator in excess of the amounts specified in 9 VAC 25-590-210 B1 up to the per occurrence and annual aggregate requirements specified in this section for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

DE. Owners and operators who demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used for purposes of demonstrating financial responsibility by owners or operators to support a financial responsibility requirement determination:

1. Copies of invoices from petroleum suppliers which indicate the gallons of petroleum pumped into all underground storage tanks on an annual basis.
2. Copies of disposal or recycling receipts which indicate the gallons of petroleum pumped out of

3. Letters from petroleum suppliers or disposal or recycling firms on the supplier's, disposer's or recycler's letterhead, which are signed by the appropriate financial officer and which indicate the gallons of petroleum pumped into or out of all of the owner's or operator's underground storage tanks on an annual basis.

4. Any other form of documentation which the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

ED. For the purposes of this section, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

FE. If the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for: (i) taking corrective action; (ii) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or (iii) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subsection A of this section.

GF. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required for each mechanism shall be the amount specified in subsection B of this section.

HG. If assurance is being demonstrated by a combination of mechanisms, the owner or operator

shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection B of this section, by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

H. The amounts of assurance required under this section exclude legal defense costs.

J. The required per\_-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §4, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **Law Reviews**

Call for Public Participation in State Voluntary Remediation Programs: Strategies for Promoting Public Involvement Opportunities in Virginia. Comment, 30 U.Rich.L.Rev. 499 (1996).

Environmental Law. Eric A. DeGroff, 34 U.Rich.L.Rev. 799 (2000).

### **9VAC25-590-50. Allowable mechanisms and combinations of mechanisms.**

A. Subject to the limitations of subsection B of this section, an owner or operator may use any

one or combination of the mechanisms listed in 9VAC25-590-60 through 9VAC25-590-120 to

demonstrate financial responsibility under this chapter for one or more underground storage tanks. A local government owner or operator may use any one or combination of the mechanisms listed in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250 to demonstrate financial responsibility under this chapter for one or more underground storage tanks.

B. An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this chapter, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §5, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-60. Financial test of self-insurance.**

A. An owner or operator and/or guarantor, may satisfy the requirements of 9VAC25-590-40 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator and/or guarantor shall meet the requirements of subsections B or C, and D of this section based on year-end financial statements for the latest completed financial reporting year.

B. 1. The owner or operator and/or guarantor shall have a tangible net worth at least equal to the total of:

a. ~~The~~ applicable aggregate financial responsibility amount required by 9VAC25-590-40 B for which a financial test is used to demonstrate financial responsibility, except as provided in 9VAC25-590-210; and

b. The aggregate aboveground storage tank financial responsibility amount required under 9 VAC 25-640, for which a financial test is used to demonstrate financial responsibility.

2. In addition to the requirements set forth in subdivision 1 of this subsection, the owner or operator and/or guarantor shall also have a tangible net worth of at least 10 times:

a. The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 (1997), to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 (1997) or the Virginia Waste Management Board under ~~9VAC20-60-590 C, 9VAC20-60-590 E, 9VAC20-60-590 G, 9VAC20-60-790 L, 9VAC20-60-810 C, 9VAC20-60-810 E, 9VAC20-60-810 G~~ 264.143, 264.145 and 264.147 (as incorporated by reference in 9 VAC 20-60-264) and 265.143, 265.145, and 265.147 (as incorporated by reference in 9 VAC 20-60-265) of the Virginia Hazardous Waste Management Regulations; and

b. The sum of current plugging and abandonment cost estimates for which a financial test for

self-insurance is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR 144.63 (1997) or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145 (1997) ([Underground Injection Control Program](#)).

3. The owner ~~or~~ operator, and/or guarantor shall comply with either subdivision a or b below:

a. (1) The financial reporting year-end financial statements of the owner or operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and

(2) The financial reporting year-end financial statements of the owner or operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural ~~Electrification Administration~~ [Utilities Service](#); or

(b). Report annually the tangible net worth of the owner or operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet shall have assigned a financial strength rating which at least equals the amount of financial responsibility required by the owner or operator under subdivisions 1 and 2 of this subsection. Relevant Dun and Bradstreet ratings are as follows (current Dun and Bradstreet ratings will be used for demonstration requirements which exceed the annual aggregate amounts listed below):

Annual Aggregate Requirement	Dun and Bradstreet Rating
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STATE WATER CONTROL BOARD  
9 VAC 25-590--Virginia Petroleum Underground Storage Tank  
Financial Responsibility Requirements

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\$20,000	EE (\$20,000 to \$34,999)
\$40,000	DC (\$50,000 to \$74,999)
\$80,000	CB (\$125,000 to \$199,999)
\$150,000	BB (\$200,000 to \$299,999)
\$200,000	BB (\$200,000 to \$299,999)
<u>\$300,000</u>	<u>BA (\$300,000 to \$499,999)</u>
<u>\$500,000</u>	<u>1A (\$500,000 to \$749,999)</u>
<u>\$750,000</u>	<u>2A (\$750,000 to \$999,999)</u>
<u>\$1,000,000</u>	<u>3A (\$1,000,000 to \$9,999,999); and</u>

(2) The financial reporting year-end financial statements of the owner or operator and/or guarantor, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. The owner or operator and/or guarantor shall have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I or Appendix XI.

C. 1. The owner or operator and/or guarantor shall have a tangible net worth at least equal to the total of:

a. ~~†~~The applicable aggregate amount required by 9VAC25-590-40 B for which a financial test is used to demonstrate financial responsibility, except as provided in 9VAC25-590-210; and

b. The aggregate aboveground storage tank financial responsibility amount required under 9 VAC 25-640 for which a financial test is used to demonstrate financial responsibility.

2. In addition to the requirements set forth in subdivision 1 of this subsection, the owner or operator and/or guarantor shall also have a tangible net worth of at least six times:

a. The financial test requirements for self insurance of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage in each state of business operations to the EPA under 40 CFR 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 (1997), to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 (1997) or the Virginia Waste Management Board under ~~9VAC20-60-590 C, 9VAC20-60-590 E, 9VAC20-60-590 G, 9VAC20-60-790 L, 9VAC20-60-810 C, 9VAC20-60-810 E, 9VAC20-60-810 G~~ 264.143, 264.145 and 264.147 (as incorporated by reference in 9 VAC 20-60-264) and 265.143, 265.145, and 265.147 (as incorporated by reference in 9 VAC 20-60-265) of the Virginia Hazardous Waste Management Regulations; and

b. The financial test requirements for self-insurance of current plugging and abandonment cost estimates in each state of business operations to EPA under 40 CFR 144.63 (1997) or to a state

(Underground Injection Control Program).

3. The financial reporting year-end financial statements of the owner or operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

4. The financial reporting year-end financial statements of the owner or operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. If the financial statements of the owner or operator and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural ~~Electrification Administration~~ Utilities Service, the owner or operator and/or guarantor shall obtain a special report by an independent certified public accountant stating that:

a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year-end financial statements of the owner or operator and/or guarantor with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to the accountant's attention which caused him to believe that the specified data should be adjusted.

6. The owner or operator and/or guarantor shall have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II or Appendix XI.

D. To meet the financial demonstration test under subsections B or C of this section, the chief financial officer of the owner or operator and/or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate alternative or Appendix XI, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an owner or operator using the [financial](#) test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the owner or operator and/or guarantor. If the board finds, on the basis of such reports or other information, that the owner or operator and/or guarantor no longer meets the financial test requirements of subsection B or C and D of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such finding.

G. If the owner or operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, or within 30 days of notification by the board that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the board of such failure within 10 days.

### **Statutory Authority**

### **Historical Notes**

Derived from VR680-13-03 §6, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **Law Reviews**

Environmental Law. Eric A. DeGross, 34 U.Rich.L.Rev. 799 (2000).

### **9VAC25-590-70. Guarantee.**

A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

1. A firm that:

- a. Possesses a controlling interest in the owner or operator;
  - b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or
  - c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or
2. A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9VAC25-590-60 B or C and D based on year-end

financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I or Appendix XI and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator, and the board. If the board notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-590-60 B or C and D, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator and the board receives the notification, as evidenced by the return receipts. The owner or operator shall obtain alternate coverage as specified in 9VAC25-590-190.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An owner or operator who uses a guarantee to satisfy the requirements of 9VAC25-590-40 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under 9VAC25-590-170. This standby trust fund shall meet the requirements specified in 9VAC25-590-120.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §7, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-80. Insurance and group self-insurance pool coverage.**

A. 1. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or group self-insurance pool.

2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools shall comply with §62.1-44.34:12 of the Code of Virginia and the rules promulgated by the State Corporation Commission ~~Bureau of Insurance Regulation No. 33~~ designated as Chapter 380 of Title 14 of the Virginia Administrative Code and entitled "Rules Governing Underground Storage Tank Owners and Operators Group Self-Insurance Pools." (14VAC5-380-~~10 et seq.~~).

B. Each insurance policy shall be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Each insurance policy shall be issued by an insurer ~~or a group self-insurance pool~~ that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an

D. Each group self-insurance pool must be licensed in accordance with 14 VAC 5-380 and any coverage provided by such a pool shall be evidenced by a certificate of group self-insurance worded identically as specified in Appendix XII, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

~~D~~E. Each insurance policy or group self-insurance pool plan shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of corrective action or damaged third party, as provided in this chapter, with a right of reimbursement by the insured or member for any such payment made by the insurer or group self-insurance pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §8, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **Law Reviews**

**9VAC25-590-90. Surety bond.**

A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded identically as specified in Appendix V, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per occurrence and annual aggregate penal sums.

~~D. The owner or operator who uses a surety bond to satisfy the requirements of 9VAC25-590-40 shall establish a standby trust fund when the surety bond is acquired.~~ Under the terms of the bond, all amounts paid by the surety under the bond will be paid directly to the board deposited directly into the standby trust fund in accordance with instructions from the board under 9VAC25-590-170. ~~This standby trust fund shall meet the requirements specified in 9VAC25-590-120.~~

**Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §9, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

#### **9VAC25-590-100. Letter of credit.**

A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter of credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. ~~An owner or operator who uses a letter of credit to satisfy the requirements of 9VAC25-590-40 shall also establish a standby trust fund when the letter of credit is acquired.~~ Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be ~~deposited~~ paid by the issuing institution directly ~~into the standby trust fund~~ to the board in accordance with instructions from the board under 9VAC25-590-170. ~~This standby trust fund shall meet the requirements specified in 9VAC25-590-120.~~

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution

notifies the owner or operator, and the board by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator and the board receives the notice, as evidenced by the return receipts.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §10, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-110. Trust fund.**

A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the owner or operator. The wording of the trust agreement shall be identical to the wording specified in Appendix VII, and shall be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism or mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the owner or operator such funds as the board specifies in writing.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §11, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-120. Standby trust fund.**

A. An owner or operator, or guarantor using ~~any one of the mechanisms~~ the guarantee authorized by 9VAC25-590-70 ~~or 9VAC25-590-90 and 9VAC25-590-100~~ shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be

an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement or trust agreement shall be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional corrective action costs or third party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

D. An owner, or operator, or guarantor may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §12, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-130. Substitution of financial assurance mechanisms by owner or operator.**

A. An owner or operator may substitute any alternate financial assurance mechanisms as

mechanism or combination of mechanisms that satisfies the requirements of 9VAC25-590-40.

B. After obtaining alternate financial assurance as specified in this chapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §13, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-140. Cancellation or nonrenewal by a provider of financial assurance.**

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator, and the board.

1. Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator and the board receives the notice of termination, as evidenced by the return receipts.

2. Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner

Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the owner or operator and the board receives the notice of termination, as evidenced by the return receipts.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9VAC25-590-190, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;
2. The effective date of termination; and
3. The evidence of the financial assurance mechanism subject to the termination maintained in accordance with 9VAC25-590-160 B.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §14, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

**9VAC25-590-150. Reporting by owner or operator.**

A. An owner or operator shall submit the appropriate original forms listed in 9VAC25-590-160

B documenting current evidence of financial responsibility to the board within 30 days after the owner or operator identifies or confirms a release from an underground storage tank required to be reported under 9VAC25-580-220 or 9VAC25-580-240. For all subsequent releases within the same period of time for which the documents submitted according to this subsection are still effective, the owner or operator shall submit a letter which identifies the owner's or operator's name and address and the underground storage tanks' location by site name, street address, board incident designation number and a statement that the financial responsibility documentation previously provided to the board is currently in force.

B. An owner or operator shall submit the appropriate forms listed in 9VAC25-590-160 B documenting current evidence of financial responsibility to the board if the owner or operator fails to obtain alternate coverage as required by this chapter within 30 days after the owner or operator receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;
2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
3. Failure of a guarantor to meet the requirements of the financial test; or
4. Other incapacity of a provider of financial assurance.

C. An owner or operator shall submit the appropriate forms listed in 9VAC25-590-160 B

documenting current evidence of financial responsibility to the board as required by 9VAC25-590-60 G and 9VAC25-590-140 B.

D. An owner or operator shall certify compliance with the financial responsibility requirements of this chapter as specified in the new tank notification form ([Form 7530](#)) when notifying the board of the installation of a new underground storage tank under 9VAC25-580-70.

E. The board may require an owner or operator to submit evidence of financial assurance as described in 9VAC25-590-160 B or other information relevant to compliance with this chapter at any time.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §15, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-160. Recordkeeping.**

A. Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an underground storage tank until released from the requirements of this chapter under 9VAC25-590-180. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's

place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the board.

B. Owners or operators shall maintain the following types of evidence of financial responsibility:

1. An owner or operator using an assurance mechanism specified in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250 shall maintain a copy of the instrument worded as specified.
2. An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test, shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.
3. An owner or operator using a guarantee ~~or surety bond or letter of credit~~ shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
4. A local government owner or operator using a local government guarantee with standby trust under 9VAC25-590-250 shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
5. A local government owner or operator using the local government bond rating test under 9VAC25-590-250 shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.
6. A local government owner or operator using the local government guarantee under 9VAC25-

590-250, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 9VAC25-590-250 shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

7. An owner or operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool ~~coverage policy plan~~ and membership agreement, with the endorsement or certificate of insurance and any amendments to the agreements.

8. An owner or operator using a local government fund under 9VAC25-590-250 shall maintain the following documents:

a. A copy of the state constitutional provision or local government statute, charter, ordinance or order dedicating the fund; and

b. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under 40 CFR 280.107(a)(3) (1997) (as incorporated by reference in 9VAC25-590-250) using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

c. If the fund is established under 40 CFR 280.107(a)(3) (1997) (as incorporated by reference in 9VAC25-590-250) using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum (under 40 CFR 280.107(a)(3)(i) (1997)) (as incorporated by

reference in 9VAC25-590-250), or attestation by the Virginia Attorney General as specified under 40 CFR 280.107(a)(3)(ii) (1997) (as incorporated by reference in 9VAC25-590-250).

9. A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

10. a. An owner or operator using an assurance mechanism specified in 9VAC25-590-60 through 9VAC25-590-110 or 9VAC25-590-250 shall maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The owner or operator shall update this certification whenever the financial assurance mechanism or mechanisms used to demonstrate financial responsibility changes.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §16, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-170. Drawing on financial assurance mechanism.**

A. Except as specified in subsection D of this section, the board may cash the letter of credit or surety bond or shall may require the guarantor ~~or surety or institution issuing a letter of credit~~ to

place the amount of funds stipulated by the board, up to the limit of funds provided by the

~~financial assurance mechanism~~ guarantee, into the standby trust if:

1. a. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

b. The board determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator, or the owner or operator has notified the board pursuant to Parts V (9VAC25-580-190 et seq.) and VI (9VAC25-580-230 et seq.) of 9VAC25 Chapter 580 of a release from an underground storage tank covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

B. The board may ~~draw on a standby trust fund~~ use the financial responsibility funds obtained pursuant to subsection A to conduct corrective action or to pay a third party claim when:

1. The board makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part VI (9VAC25-580-230 et seq.); or

2. The board has received either:

a. Certification from the owner or operator and the third party liability claimant or claimants and from attorneys representing the owner or operator and the third party liability claimant or claimants that a third party liability claim should be paid. The certification shall be worded

identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

b. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter and the board determines that the owner or operator has not satisfied the judgment.

C. If the board determines that the amount of corrective action costs and third party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The board shall direct payment ~~from the standby trust fund~~ of the financial responsibility funds for third party liability claims in the order in which the board receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

D. A local government acting as guarantor under 40 CFR 280.106(e) (1997) (as incorporated by reference in 9VAC25-590-250), the local government guarantee without standby trust, shall make payments as directed by the ~~director~~ board under the circumstances described in subsection A, B or C of this section.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §17, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

**9VAC25-590-180. Release from the requirements.**

An owner or operator is no longer required to maintain financial responsibility under this chapter for an underground storage tank after the tank has been properly closed or a change-in-service to an unregulated use properly completed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by Part VII (9VAC25-580-320 et seq.) of 9VAC25 Chapter 580.

**Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

**Historical Notes**

Derived from VR680-13-03 §18, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

**9VAC25-590-190. Bankruptcy or other incapacity of owner, operator or provider of financial assurance.**

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the board by certified mail of such commencement and submit the appropriate forms listed in 9VAC25-590-160 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator, and the board by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-590-70.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the ~~director~~ board by certified mail of such commencement and submit the appropriate forms listed in 9VAC25-590-160 B documenting current financial responsibility.

D. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator and the board by certified mail of such commencement as required under the terms of the guarantee specified in 40 CFR 280.106 (1997) (as incorporated by reference in 9VAC25-590-250).

E. An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool ~~coverage policy plan~~, surety bond, or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate

coverage within 30 days after such notification, he shall immediately notify the board in writing.

F. Within 30 days after receipt of written notification that the Virginia Petroleum Storage Tank Fund has become incapable of covering assured corrective action or third party compensation costs, the owner or operator shall obtain alternate financial assurance in accordance with 9VAC25-590-40.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §19, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-200. Replenishment of guarantees, letters of credit or surety bonds.**

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, ~~letter of credit, or surety bond~~, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or
2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. If at any time a letter of credit or surety bond is drawn upon by instruction of the board and

the board has expended all or part of the funds for corrective action or to pay a third party liability claim(s), the owner or operator by the anniversary date of the financial assurance mechanism shall acquire another financial assurance mechanism for the amount by which the face value of the letter of credit or surety bond has been reduced.

CB. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9VAC25-590-40. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §20, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-210. Virginia Petroleum Storage Tank Fund.**

A. The Virginia Petroleum Storage Tank Fund will be used for costs in excess of the financial responsibility requirements specified under subsection B of this section up to \$1 million per occurrence for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks in accordance with the following:

1. Corrective action disbursements for accidental releases with no associated third party

disbursements from the fund shall not exceed:

- a. \$995,000 for the \$5,000 corrective action requirement;
- b. \$990,000 for the \$10,000 corrective action requirement;
- c. \$980,000 for the \$20,000 corrective action requirement;
- d. \$970,000 for the \$30,000 corrective action requirement;
- e. \$950,000 for the \$50,000 corrective action requirement.

Third party disbursements for accidental releases with no corrective action disbursements from the fund shall not exceed:

- a. \$985,000 for the \$15,000 third party requirement;
- b. \$970,000 for the \$30,000 third party requirement;
- c. \$940,000 for the \$60,000 third party requirement;
- d. \$880,000 for the \$120,000 third party requirement;
- e. \$850,000 for the \$150,000 third party requirement.

Combined corrective action and third party disbursements from the fund shall not exceed:

- a. \$980,000 for the \$20,000 combined requirement;
- b. \$960,000 for the \$40,000 combined requirement;

- c. \$920,000 for the \$80,000 combined requirement;
- d. \$850,000 for the \$150,000 combined requirement;
- e. \$800,000 for the \$200,000 combined requirement.

The first priority for disbursements from the fund shall be for corrective action costs necessary to protect human health and the environment.

2. Compensation for bodily injury and property damage shall be paid ~~to third parties~~ only (i) in accordance with final court orders in cases which have been tried to final judgment no longer subject to appeal, (ii) in accordance with final arbitration awards not subject to appeal, or (iii) where the board approved the settlement of claim between the owner or operator and the third party prior to execution by the parties.

The Commonwealth has not waived its sovereign immunity and does not believe that it is a necessary party to a private action against an owner or operator for third party bodily injury and property damage.

3. Owner or operator managed cleanups. An owner or operator responding to a release and conducting a board approved corrective action plan in accordance with Parts V and VI (9VAC25-580-190 through 9VAC25-580-310) may proceed to pay for all costs incurred for such activities. An accounting submitted to the board of all costs incurred will be reviewed and those costs in excess of the financial responsibility requirements up to \$1 million which are reasonable and have been approved by the board will be reimbursed from the fund.

4. Owners or operators shall pay the financial responsibility requirement specified in this section

5. No person shall receive reimbursement from the fund for any costs or damages incurred:
  - a. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental regulations under 9VAC25-580-~~10 et seq.~~ or this chapter;
  - b. Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee or agent, or anyone within the privity or knowledge of that person;
  - c. Where the person, his employee or agent, or anyone within the privity or knowledge of that person, has (i) failed to carry out the instructions of the board, committed willful misconduct or been negligent in carrying out or conducting actions under Part V or VI (9VAC25-580-190 through 9VAC25-580-310) or (ii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting actions under Parts V or VI (9VAC25-580-190 through 9VAC25-580-310);
  - d. Where the claim has been reimbursed or is reimbursable, by an insurance policy;
  - e. Where the costs or damages were incurred pursuant to Article 4.1 (§10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia and the regulations promulgated thereunder;
  - f. For corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9VAC25-590-10, or an owner of an

aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored; or

g. Prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to §62.1-44.34:13 of the Code of Virginia.

6. No person shall receive reimbursement from the fund for third party bodily injury or property damage:

a. Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the owner or operator, his employee or agent, or anyone within his privity or knowledge;

b. Where the claim cost has been reimbursed or is reimbursable by an insurance policy;

c. Where the costs or damages were incurred pursuant to Article 4.1 (§10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia and the regulations promulgated thereunder;

d. Where the release was reported before December 22, 1989; or

e. Where the owner or operator does not demonstrate the reasonableness and necessity of the claim costs.

B. 1. The fund will be used to demonstrate financial responsibility requirements for owners or operators in excess of the amounts specified in this subdivision up to the per occurrence and annual aggregate requirements specified in 9VAC25-590-40 for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental

- a. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$5,000 per occurrence for taking corrective action and \$15,000 per occurrence for compensating third parties, with an annual aggregate of \$20,000.
- b. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$10,000 per occurrence for taking corrective action and \$30,000 per occurrence for compensating third parties, with an annual aggregate of \$40,000.
- c. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$20,000 per occurrence for taking corrective action and \$60,000 per occurrence for compensating third parties, with an annual aggregate of \$80,000.
- d. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$30,000 per occurrence for taking corrective action and \$120,000 per occurrence for compensating third parties, with an annual aggregate of \$150,000.
- e. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, \$50,000 per occurrence for taking corrective action and \$150,000 per occurrence for compensating third parties, with an annual

2. The fund may be used to satisfy only the portion of an owner or operator's financial responsibility requirement specified in subdivision 1 of this subsection and, therefore, shall be used in combination with one or more of the mechanisms specified in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250.

3. The requirements of 9VAC25-590-40 B apply solely to financial responsibility demonstration requirements under this section, and shall not affect reimbursements paid under this section.

C. This fund may also be used for the following:

1. Costs incurred by the board for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the board to protect human health and the environment.

2. Costs incurred by the board for taking ~~both~~ corrective action ~~and compensating third parties~~ up to \$1 million for any release of petroleum into the environment from an underground storage tank:

a. Whose owner or operator cannot be determined by the board within 90 days; or

b. Whose owner or operator is incapable, in the judgment of the board, of carrying out such corrective action properly and paying for third party liability claims.

3. Costs incurred by the board for taking corrective action for any release of petroleum into the

environment from tanks which are otherwise specifically listed in 9VAC25-590-10 as

exemptions in the definition of an underground storage tank.

4. All other uses authorized by §62.1-44.34:11 of the Code of Virginia.

D. The board shall seek recovery of fund moneys expended for corrective action in accordance with §62.1-44.34:11 of the Code of Virginia where the owner or operator has violated substantive environmental regulations under 9VAC25-580-10 ~~et seq.~~ or this chapter.

E. The board shall have the right of subrogation for moneys expended from the fund as compensation for bodily injury, death, or property damage against any person who is liable for such injury, death or damage.

F. No funds shall be paid for reimbursement of costs incurred by an owner or operator for corrective action and for compensating third parties for bodily injury and property damage prior to December 22, 1989.

G. No disbursements shall be made from the fund for owners or operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

H. ~~The No funds shall be paid in excess of the minimum disbursement necessary to~~ ~~will be managed to provide for~~ clean up ~~of~~ each occurrence to ~~an the~~ acceptable level of risk, ~~as determined by the board in its sole discretion.~~

**Statutory Authority**

### **Historical Notes**

Derived from VR680-13-03 §21, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **Law Reviews**

Environmental Law. Eric A. DeGroff, 34 U.Rich.L.Rev. 799 (2000); Henry R. Pollard, V, 30 U.Rich.L.Rev. 1393 (1996).

### **9VAC25-590-220. Notices to the State Water Control Board.**

All requirements of this regulation for notification to the State Water Control Board shall be addressed as follows:

Director

Department of Environmental Quality

629 E. Main Street

P.O. Box 10009

Richmond, Virginia 23240-0009

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §22, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-230. Delegation of authority.**

The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by §62.1-44.14 of the Code of Virginia.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from VR680-13-03 §23, eff. May 9, 1990; amended, Virginia Register Volume 10, Issue 1, eff. November 3, 1993; Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-240. Lender liability.**

The U.S. Environmental Protection Agency regulations on lender liability contained in the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) (40 CFR 280.200 through 280.230 (1997)) are incorporated by reference into this chapter as amended by the word or phrase substitutions given in 9VAC25-590-260.

### **Statutory Authority**

### **Historical Notes**

Derived from Virginia Register Volume 14, Issue 23, eff. September 2, 1998.

### **Law Reviews**

Environmental Law. Eric A. DeGroff, 34 U.Rich.L.Rev. 799 (2000).

### **9VAC25-590-250. Local government financial responsibility demonstration.**

The U.S. Environmental Protection Agency regulations on local government financial responsibility demonstration contained in the Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) (40 CFR 280.104 through 280.107 (1997)) are incorporated by reference into this chapter as amended by the word or phrase substitutions given in 9VAC25-590-260.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from Virginia Register Volume 14, Issue 23, eff. September 2, 1998.

### **9VAC25-590-260. Word or phrase substitutions.**

In 9VAC25-590-240 and 9VAC25-590-250, the following substitutions apply:

1. All terms which are defined in 9VAC25-590-10 shall be given the definition contained in

2. a. Director of the Department of Environmental Quality for director of the implementing agency;
- b. Department of Environmental Quality for the implementing agency;
- c. UST preventative and operating requirements under 9VAC25-580-10 et seq. for UST technical standards;
- d. 9VAC25-580-~~10 et seq.~~ and 9VAC25-590-~~10 et seq.~~ for 40 CFR Part 280 (1997);
- e. 9VAC25-580-230 through 9VAC25-580-300 for 40 CFR Part 280, Subpart F (1997);
- f. 9VAC25-590-~~10 et seq.~~ for 40 CFR Part 280, Subpart H (1997);
- g. 9VAC25-580-50 for 40 CFR 280.20;
- h. 9VAC25-580-60 for 40 CFR 280.21;
- i. 9VAC25-580-70 for 40 CFR 280.22 (1997);
- j. 9VAC25-580-90 for 40 CFR 280.31;
- k. 9VAC25-580-200 through 9VAC25-580-300 for 40 CFR 280.51 through 280.67;
- l. 9VAC25-580-310 for 40 CFR 280.70;
- m. 9VAC25-580-320 through 9VAC25-580-350 for 40 CFR 280.71 through 280.74;
- n. 9VAC25-580-330 for 40 CFR 280.72;

o. 9VAC25-590-20 through 9VAC25-590-160 for 40 CFR 280.90 through 280.111;

p. 9VAC25-590-40 for 40 CFR 280.93;

q. 9VAC25-590-170 for 40 CFR 280.112 (1997); and

r. 9VAC25-590-190 for 40 CFR 280.114.

### **Statutory Authority**

§§62.1-44.34:9 and 62.1-44.34:12 of the Code of Virginia.

### **Historical Notes**

Derived from Virginia Register Volume 14, Issue 23, eff. September 2, 1998.

### APPENDIX I. LETTER FROM CHIEF FINANCIAL OFFICER.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[NOTE: Owners or operators demonstrating financial responsibility using the financial test who do not also own or operate hazardous waste facilities or underground injection wells are eligible to use Appendix XI (Letter from Chief Financial Officer – Short Form) instead of Appendix I.]

I am the chief financial officer of [insert name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert

"sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least

[insert dollar amount] corrective action per occurrence [insert dollar amount] third party liability  
per occurrence and [insert dollar amount] annual aggregate arising from operating (an)  
underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this  
[insert "owner or operator," and/or "guarantor"]: [List for each facility the name and address of  
the facility where tanks assured by this financial test are located, and whether tanks are assured  
by this financial test. If separate mechanisms or combinations of mechanisms are being used to  
assure any of the tanks at this facility, list each tank assured by this financial test by the tank  
identification number provided in the notification submitted pursuant to 9VAC25-580-70  
(Underground Storage Tanks; Technical Standards and Corrective Action Requirements)].

A [insert "financial test," and/or "guarantee"] is also used by this [insert "owner or operator" or  
"guarantor"] to demonstrate evidence of financial responsibility in the following amounts under  
other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145  
(1997):

EPA Regulation for each state of business operations (specify state):

	Amount
Closure (Sections 264.143 and 265.143) .....	\$_____
Post-Closure Care (Sections 264.145 and 265.145) .....	\$_____

Liability Coverage (Sections 264.147 and 265.147) ..... \$\_\_\_\_\_

Corrective Action (Section 264.101(b)) ..... \$\_\_\_\_\_

Plugging and Abandonment (Section 144.63) ..... \$\_\_\_\_\_

Other State Programs (specify state):

Closure ..... \$\_\_\_\_\_

Post-Closure Care ..... \$\_\_\_\_\_

Liability Coverage ..... \$\_\_\_\_\_

Corrective Action ..... \$\_\_\_\_\_

Plugging and Abandonment ..... \$\_\_\_\_\_

Virginia Hazardous Waste Management Regulations:

Closure (9VAC20-60-~~810-E264~~ and 9VAC20-60-~~590-265~~ C) ..... \$\_\_\_\_\_

Post-Closure Care (9VAC20-60-~~810-E264~~ and 9VAC20-60-~~590-E265~~) ... \$\_\_\_\_\_

Liability Coverage (9VAC20-60-~~810-E264~~ and 9VAC20-60-~~590-E265~~) .. \$\_\_\_\_\_

Corrective Action (9VAC20-60-~~790~~-2264) ..... \$\_\_\_\_\_

Plugging and Abandonment (40 CFR Section 144.63) (1997) ..... \$\_\_\_\_\_

TOTAL ..... \$\_\_\_\_\_

This [insert "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of 9VAC25-590-60 B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 9VAC25-590-60 C are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee.....\$\_\_\_\_\_

2. Amount of annual aboveground storage tank (AST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9 VAC 25-640.....\$\_\_\_\_\_

3. Total UST/AST financial responsibility obligations assured by a financial test and/or guarantee (sum of lines 1 and 2).....\$\_\_\_\_\_

42. Amount of corrective action, closure and post-closure care costs, liability coverage, [and] plugging and abandonment costs covered by a financial test, and/or guarantee under other EPA

regulations or state programs authorized by EPA under 40 CFR Parts 271 or 145

(1997).....\$ \_\_\_\_\_

53. Sum of lines ~~1 and 2~~ 3 and 4.....\$ \_\_\_\_\_

64. Total tangible assets.....\$ \_\_\_\_\_

75. Total liabilities [if any of the amount reported on line 53 is included in total liabilities, you may deduct that amount from this line or add that amount to line 86].....\$ \_\_\_\_\_

86. Tangible net worth [subtract line 75 from line 64].....\$ \_\_\_\_\_

97. Is line 86 at least equal to line 34 above? Yes.... No....

108. Is line 86 at least equal to the sum of line 34 plus 10 times line 42? Yes.... No....

119. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? Yes.... No....

1210. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? Yes.... No....

1344. Have financial statements for the latest financial reporting year been filed with the Rural ~~Electrification Administration~~ Utilities Service? Yes.... No....

1442. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating at least equal to the total amount of annual ~~UST~~ aggregate coverage being assured, as entered on line 5, ~~being assured~~ according to the table below?

Annual Aggregate Requirement	Dun and Bradstreet Rating
\$20,000	EE (\$20,000 to \$34,999)
\$40,000	DC (\$50,000 to \$74,999)
\$80,000	CB (\$125,000 to \$199,999)
\$150,000	BB (\$200,000 to \$299,999)
\$200,000	BB (\$200,000 to \$299,999)
<u>\$300,000</u>	<u>BA (\$300,000 to \$499,999)</u>
<u>\$500,000</u>	<u>1A (\$500,000 to \$749,999)</u>
<u>\$750,000</u>	<u>2A (\$750,000 to \$999,999)</u>
<u>\$1,000,000</u>	<u>3A (\$1,000,000 to \$9,999,999)</u>

[Answer "Yes" only if both criteria have been met.] Yes.... No....

1513. If you did not answer yes to one of lines 119 through 1412, please attach a report from an independent-certified public accountant certifying that there are no material differences between the data reported in lines 64 through 108 above and the financial statements for the latest

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee. \_\_\_\_\_

2. Amount of annual aboveground storage tank (AST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9 VAC 25-640.....\$ \_\_\_\_\_

3. Total UST/AST financial responsibility obligations assured by a financial test and/or guarantee (sum of lines 1 and 2).....\$ \_\_\_\_\_

42. Amount of corrective action closure and post-closure care costs, liability coverage, [and] plugging and abandonment costs covered by a financial test, and/or guarantee under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 or 145.....\$ \_\_\_\_\_

53. Sum of lines 31 and 42.....\$ \_\_\_\_\_

64. Total tangible assets.....\$ \_\_\_\_\_

75. Total liabilities [if any of the amount reported on line 53 is included in total liabilities, you may deduct that amount from this line or add that amount to line 86].....\$ \_\_\_\_\_

86. Tangible net worth [subtract line 75 from line 64]..\$ \_\_\_\_\_

97. Total assets in the U.S. [required only if less than 90% of assets are located in the U.S.].....\$ \_\_\_\_\_

108. Is line 86 at least equal to line 31 above? Yes\_\_\_ No\_\_\_

~~119~~. Is line ~~86~~ at least equal to the sum of line ~~31~~ plus 6 times the sum of line ~~42~~? Yes\_\_\_ No\_\_\_

~~1210~~. Are at least 90% of assets located in the U.S.? [If "No," complete line ~~131~~.] Yes\_\_\_ No\_\_\_

~~1311~~. Is line ~~97~~ at least equal to the sum of line ~~31~~ plus 6 times the sum of line ~~42~~? Yes\_\_\_

No\_\_\_

[Fill in either lines ~~1412-1715~~ or lines ~~1816-2018~~.:]

~~1412~~. Current assets.....\$\_\_\_

~~1513~~. Current liabilities.....\$\_\_\_

~~1614~~. Net working capital subtract line ~~1513~~ from line ~~1412~~.....\$\_\_\_

~~1715~~. Is line ~~1614~~ at least equal to the sum of line ~~31~~ plus 6 times the sum of line ~~42~~? Yes\_\_\_

No\_\_\_

~~1816~~. Current bond rating of most recent bond issue? -----

~~1917~~. Name of rating service ----- \_\_\_\_\_

~~2018~~. Date of maturity of bond ----- \_\_\_\_\_

~~2119~~. Have financial statements for the latest financial reporting year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration Utilities Service? Yes\_\_\_ No\_\_\_

[If "no," please attach a report from an independent certified public accountant certifying that there are no material differences between the data reported in lines ~~4-186-20~~ above and the

[For Alternatives I and II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of this chapter as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

## APPENDIX II. GUARANTEE.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9VAC25-590-60 B or C and D of Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements,

9VAC25-590-10 ~~et seq.~~, and agrees to comply with the requirements for guarantors as specified in 9VAC25-590-70 B.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9VAC25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility]. This guarantee satisfies this chapter's requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] corrective action per occurrence, [insert dollar amount] third party liability per occurrence, and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the State Water Control Board and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of 9VAC25-590-170, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 9VAC25-580-230 through 9VAC25-580-300 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of 9VAC25-590-170, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the State Water Control Board, shall fund a standby trust in accordance with the provisions of 9VAC25-590-170 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9VAC25-590-60 B or C and D, guarantor

shall send within 120 days of such failure, by certified mail, notice to [owner or operator] and the State Water Control Board. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator] and the State Water Control Board, as evidenced by the return receipts.

(5) Guarantor agrees to notify [owner or operator] and the State Water Control Board by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 9VAC25-580-~~10 et seq.~~ and 9VAC25-590-~~10 et seq.~~

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of 9VAC25-590-~~10 et seq.~~ for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator] and the State Water Control Board, such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator] and the State Water Control Board, as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of,

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-590-40.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of 9VAC25-590-~~10 et seq.~~ as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

APPENDIX III. ENDORSEMENT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy number:

Period of coverage: [current policy period]

Name of ~~{Insurer-or-group-self-insurance-pool}~~:

Address of ~~{Insurer-or-group-self-insurance-pool}~~:

Name of insured:

Address of insured:

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (9VAC25-590-~~10 et seq.~~).

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies)]

where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9VAC25-580-70 (Underground Storage Tanks; Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases";] in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the corrective action "each occurrence" and third party "each occurrence" and "annual aggregate" limits of the insurer's ~~or group's~~ liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this paragraph

2 are hereby amended to conform with subsections (a) through (e):

- a. Bankruptcy or insolvency of the insured shall not relieve the ~~["insurer" or "pool"]~~ of its obligations under the policy to which this endorsement is attached.
- b. The ~~["insurer" or "pool"]~~ is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ~~["insurer" or "pool"]~~. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-590-60 through 9VAC25-590-110.
- c. Whenever requested by the State Water Control Board, the ~~["insurer" or "pool"]~~ agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ~~["insurer" or "pool"]~~, except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured and the State Water Control Board. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured and the State Water Control Board.

[Insert for claims-made policies:]

e. The insurance covers claims otherwise covered by the policy that are reported to the ~~["insurer"~~  
~~or "pool"]~~ within six months of the effective date of cancellation or nonrenewal of the policy  
except where the new or renewed policy has the same retroactive date or a retroactive date earlier  
than that of the prior policy, and which arise out of any covered occurrence that commenced  
after the policy retroactive date, if applicable, and prior to such policy renewal or termination  
date. Claims reported during such extended reporting period are subject to the terms, conditions,  
limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this endorsement is in no respect less favorable than the  
coverage specified in APPENDIX III of 9VAC25-590-10 et seq. ~~and has been so certified by the~~  
~~State Corporation Commission of the Commonwealth of Virginia.~~ I further certify that the  
~~["insurer" or "pool"]~~ is ~~["licensed to transact the business of insurance or eligible to provide~~  
insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"].

[Signature of authorized representative of insurer ~~or group self-insurance pool]~~

[Name of person signing]

[Title of person signing], authorized representative of [name of insurer ~~or group self-insurance~~  
~~pool]~~

[Address of representative]

#### APPENDIX IV. CERTIFICATE OF INSURANCE.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the  
brackets deleted.]

STATE WATER CONTROL BOARD  
9 VAC 25-590--Virginia Petroleum Underground Storage Tank  
Financial Responsibility Requirements  
Name: [name of each covered location]

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Address: [address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [current policy period]

Name of ~~insurer or group self insurance pool~~:

Address of ~~insurer or group self insurance pool~~:

Name of insured:

Address of insured:

Certification:

1. [Name of insurer ~~or group self insurance pool~~], ~~the "insurer" or "pool"~~, as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s) in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (9VAC25-590-~~10 et seq.~~).

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided

in the notification submitted pursuant to 9VAC25-590-70 (Underground Storage Tanks;

Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage] caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"]; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the corrective action "each occurrence" and third party "each occurrence" and "annual aggregate" limits of the insurer's ~~or groups~~ liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ~~["insurer" or "pool"]~~ further certifies the following with respect to the insurance described in paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ~~["insurer" or "pool"]~~ of its obligations under the policy to which this certificate applies.

b. The {"insurer" or "pool"} is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the {"insurer" or "pool"}. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-590-60 through 9VAC25-590-110.

c. Whenever requested by the State Water Control Board, the {"insurer" or "pool"} agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the {"insurer" or "pool"}, except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured and the State Water Control Board. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured and the State Water Control Board.

[Insert for claims-made policies]

e. The insurance covers claims otherwise covered by the policy that are reported to the {"insurer" or "pool"} within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced

after the policy retroactive date, if applicable, and prior to such policy renewal or termination

date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in APPENDIX IV of 9VAC25-590-~~10 et seq.~~ and that the ~~["insurer" or "pool"]~~ is ~~["licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"]~~.

[Signature of authorized representative of insurer]

[Type name] [Title], authorized representative of ~~{name of insurer or group self insurance pool}~~

[Address of representative]

#### APPENDIX V. PAYMENT AND PERFORMANCE BOND.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator.]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Scope of coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9VAC25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:

Corrective Action (per occurrence) \$.....

Third Party Liability (per occurrence) \$.....

Annual aggregate \$.....

Surety's bond number:

Know all Persons by These Presents, that we, the principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and

severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under §62.1-44.34:8 through §62.1-44.34:12 of the Code of Virginia, Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, and under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (9VAC25-590-10 et seq.), to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases";] [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above;~~;~~  
~~and~~

~~Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;~~

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with Part VI of 9VAC25-580-230 through 25-580-300. (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) and the State Water Control Board's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" and/or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the

Principal shall provide alternate financial assurance, as specified in 9VAC25-590-10 ~~et seq.~~,

within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-590-40.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to ["take corrective action, in accordance with Part VI of 9VAC25-580-230 through 25-580-300 and the State Water Control Board's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in, accordance with 9VAC25-580-~~10 et seq.~~ and the board's instructions," and/or "third party liability compensation"] or ~~place~~ pay the funds in an amount up to the annual aggregate penal sum ~~into the standby trust fund~~ to the State Water Control Board as directed by the State Water Control Board under 9VAC25-590-170. The State Water Control Board in its sole discretion may elect to require the surety to pay the funds or to take corrective action and compensate third parties or any combination up to the annual aggregate penal sum.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a release has occurred, the Surety(ies) shall ~~place~~ pay the funds in an amount not exceeding the annual aggregate penal sum ~~into the standby trust fund~~ to the State Water Control Board as directed by the State Water Control Board under 9VAC25-590-170.

The Surety(ies) submit to the jurisdiction of the Circuit Court of the City of Richmond to adjudicate any claim against it(them) by the State Water Control Board and waive any objection to venue in that Court. Interest shall accrue at the judgment rate of interest on the amount due beginning seven days after the date of notification by the State Water Control Board. In the

event the State Water Control Board shall institute legal action to compel performance by the Surety under this agreement, the Surety shall be liable for all costs and legal fees incurred by the Board to enforce this agreement.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond. The Surety(ies) hereby agree(s) that it(they) has been notified of all material facts regarding this contract of suretyship and waive(s) any defense founded in concealment of material facts. The Surety(ies) represents that the person executing this agreement has full authority to execute the agreement. Surety(ies) hereby waive(s) any right to notice of breach or default of the Principal. The State Water Control Board may enforce this agreement against the Surety(ies) without bringing suit against the principal. The State Water Control Board shall not be required to exhaust the assets of the Principal before demanding performance or funding of the trust fund by the Surety. No lawful act of the State Water Control Board, including without limitation any extension of time to the Principal, shall serve to release any surety, whether or not that act may be construed to alter or vary this agreement. Release of one cosurety shall not act as the release of another. This agreement shall be construed to effect its purpose to provide remedial action for petroleum releases and to provide compensation for third parties injured by such releases.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal and the State Water Control Board, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the principal and the State Water Control Board, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of 9VAC25-590-~~10 et seq.~~ as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

Liability limit.....\$...

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium:.....\$...

APPENDIX VI. IRREVOCABLE STANDBY LETTER OF CREDIT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Name and address of issuing institution]

[Name and address of the Executive Director of the State Water Control Board of the Commonwealth of Virginia and Director(s) of other state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No.... in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of in words U.S. dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one director of a state implementing agency is a beneficiary, "by any one of

(1) your sight draft, bearing reference to this letter of credit, No... and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of §§62.1-44.34:8 through 62.1-44.34:12 of the Code of Virginia and Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] corrective action per occurrence, [in words] \$[insert dollar amount] third party liability per occurrence, and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 9VAC25-580-70 (Underground Storage Tanks: Technical Standards and Corrective Action Requirements), and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation, of [insert owner or operator] under a workers compensation, disability

benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-590-40 (Virginia Petroleum Underground Storage Tank Financial Responsibility Requirements).

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] and the State Water Control Board by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] and the State Water Control Board ~~is~~ are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator] and the State Water Control Board,

Partial draws are permitted under this Irrevocable Standby Letter of Credit.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall pay to you the amount of the draft promptly and directly deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of 9VAC25-590-~~10 et seq.~~ as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

APPENDIX VII. TRUST AGREEMENT.

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or

"proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of..... " or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [insert: “standby trust agreement” or “trust agreement”].

Whereas, the Grantor has elected to establish ~~[insert either "a guarantee," "surety bond," or "letter of credit"]~~ to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "9VAC25-590-~~10 et seq.~~" is the Petroleum Underground Storage Tank Financial Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

### Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the ~~[identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit,~~ from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

### Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property]. Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to

discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for ["Corrective Action" and/or "Third Party Liability Claims"].

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage] caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract

or agreement entered into to meet the requirements of 9VAC25-590-40.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for corrective action expenditures and/or third party liability claims in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined here.

#### Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

#### Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or

any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC

§80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC §80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other

provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this

successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

#### Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the State Water Control Board, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist.

Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of 9VAC25-590-~~10 et seq.~~ as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

#### APPENDIX VIII. CERTIFICATION OF ACKNOWLEDGMENT.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

State of....

County of....

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

APPENDIX IX. CERTIFICATION OF FINANCIAL RESPONSIBILITY.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

[Owner or operator] hereby certifies that it is in compliance with the requirements of 9VAC\_25-590-~~10 et seq.~~ (Petroleum Underground Storage Tank Financial Requirements Regulation).

The financial assurance mechanism[s] used to demonstrate financial responsibility under 9VAC 25-590-~~10 et seq.~~ is [are] as follows:

Indicate type of Mechanism (Note: the Fund may not be used as the sole mechanism):

\_\_\_ Virginia Petroleum Storage Tank Fund ("the Fund")

\_\_\_ Letter from Chief Financial Officer

\_\_\_ Guarantee

\_\_\_ Insurance Endorsement or Certificate

\_\_\_ Letter of Credit

\_\_\_ Surety Bond

\_\_\_ Trust Fund

Name of Issuer (for mechanism other than the Fund): \_\_\_\_\_

~~Amount of coverage~~ Demonstration amount for mechanism other than the Fund:

\$ \_\_\_\_\_ corrective action per occurrence

\$ \_\_\_\_\_ third party liability per occurrence

\$ \_\_\_\_\_ annual aggregate

~~Amount of coverage under Virginia Petroleum Storage Tank Fund:~~

~~\$ \_\_\_\_\_ per occurrence and \$ \_\_\_\_\_ annual aggregate~~ The Virginia

Petroleum Storage Tank Fund demonstrates amounts for corrective action per occurrence, third party liability per occurrence, and annual aggregate, in excess of the amounts demonstrated by the “mechanism other than the Fund” up to one million dollars. In the event that the owner/operator owns/operates in excess of 100 USTs in the Commonwealth of Virginia, the Fund demonstrates up to an annual aggregate of two million dollars.

Mechanism’s effective period of coverage: \_\_\_\_\_

(If you are using either the Financial Test or the Guarantee, please indicate the current financial reporting year, e.g., 1/01/02 – 12/31/02, if you use the calendar year as your financial reporting year, or other dates if you operate under a different fiscal year. If you are using a Letter of Credit, a Surety Bond, or an Insurance Policy, please indicate the annually renewable term of the applicable mechanism.)

Do(es) mechanism(s) cover(s): taking corrective action and/or compensating third parties for

bodily injury and property damage caused by either sudden accidental releases or nonsudden

accidental releases or accidental releases? \_\_\_\_ Yes \_\_\_\_ No

If "No," specify in the following space the items the mechanism covers:

[Signature of owner or operator]

[Name of owner or operator] [Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires:

#### APPENDIX X. CERTIFICATION OF VALID CLAIM.

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[.....]

[Signatures] [Signature(s)]

Owner or Operator Claimant(s)

Attorney for Attorney(s) for

Owner or Operator Claimant(s)

APPENDIX XI. LETTER FROM CHIEF FINANCIAL OFFICER (SHORT FORM).

[Note: This Appendix may only be used by owners or operators who do not own or operate hazardous waste facilities or underground injection control wells.]

[Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

I am the chief financial officer of [insert: name and address of the owner or operator or guarantor]. This letter is in support of the use of [insert "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [\$[insert dollar amount] corrective action per occurrence, \$[insert dollar amount] third party liability per occurrence, and [\$[insert dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 9VAC25-580-70

I am not required to demonstrate evidence of financial responsibility for any other EPA regulation or state programs authorized by EPA.

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed financial reporting year.

[Fill in the information below to demonstrate compliance with the financial test requirements.]

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee..... \$---

2. Amount of annual aboveground storage tank (AST) aggregate coverage being assured by a financial test and/or guarantee.....\$ \_\_\_\_\_

3. Total UST/AST financial responsibility obligations assured by a financial test and/or guarantee (sum of lines 1 and 2).....\$ \_\_\_\_\_

42. Total tangible assets.....\$---

53. Total liabilities [if any of the amount reported on line 34 is included in total liabilities, you may deduct that amount from this line or add that amount to line 64].....\$---

64. Tangible net worth [subtract line 53 from line 42].....\$---

75. Is line 4 at least equal to line 34 above? Yes... No...

86. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? Yes... No...

97. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration? Yes... No...

108. Have financial statements for the latest financial reporting year been filed with the Rural ~~Electrification Administration~~ Utilities Service? Yes... No...

119. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating at least equal to the amount of annual UST aggregate coverage being assured according to the table below?

Annual Aggregate	Dun and Bradstreet Rating
------------------	---------------------------

Requirement	
-------------	--

\$20,000	EE (\$20,000 to \$34,999)
----------	---------------------------

\$40,000	DC (\$50,000 to \$74,999)
----------	---------------------------

\$80,000	CB (\$125,000 to \$199,999)
----------	-----------------------------

\$150,000	BB (\$200,000 to \$299,999)
-----------	-----------------------------

\$200,000	BB (\$200,000 to \$299,999)
-----------	-----------------------------

<u>\$300,000</u>	<u>BA (\$300,000 to \$499,999)</u>
<u>\$500,000</u>	<u>1A (\$500,000 to \$749,999)</u>
<u>\$750,000</u>	<u>2A (\$750,000 to \$999,999)</u>
<u>\$1,000,000</u>	<u>3A (\$1,000,000 to \$9,999,999)</u>

[Answer "Yes" only if BOTH criteria have been met.] Yes... No...

1210. If you did not answer yes to one of lines 86 through 119, please attach a report from a certified public accountant certifying that there are no material differences between the data reported in lines 42 through 75 above and the financial statements for the latest financial reporting year.

I hereby certify that the wording of this letter is identical to the wording specified in Appendix XI of this chapter as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

APPENDIX XII. CERTIFICATE OF GROUP SELF-INSURANCE

[NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.]

Name: [name of each covered location]

Address: [address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [current policy period]

Name of Group self insurance pool :

Address of Group self-insurance pool:

Name of Member:

Address of Member:

**Certification:**

1. [Name of Group Self-Insurance Pool ], the group self-insurance pool, "Pool", as identified

above, hereby certifies that it has entered into a Membership Agreement (Agreement) with the member to provide liability coverage for the following underground storage tank(s) in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Underground Storage Tank Financial Requirements Regulation (9VAC25-590) for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage] caused by either sudden accidental releases or nonsudden accidental releases; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the Pool Plan (Plan) and Agreement; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability of the Pool are [insert the dollar amount ] corrective action per occurrence and [insert dollar amount] third party liability per occurrence and [insert dollar amount] annual aggregate [If the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the Plan or Agreement. This coverage is provided under the Plan dated [insert date] and the Agreement entered into between [name of member] and [name of Pool]. The effective date of said Agreement is [date].

2. The Pool further certifies the following with respect to the coverage described in paragraph 1:

a. Bankruptcy or insolvency of the member shall not relieve the Pool of its obligations under the policy to which this certificate applies.

b. The Pool is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the member for any such payment made by the Pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-590-60 through 9VAC25-590-110.

c. Whenever requested by the State Water Control Board, the Pool agrees to furnish to the State Water Control Board a signed duplicate original of the Agreement and Plan and all endorsements.

d. Cancellation or any other termination of the coverage by the Pool, except for nonpayment of premium or misrepresentation by the member, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the member and the State Water Control Board. Cancellation for nonpayment of premium or misrepresentation by the member will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the member and the State Water Control Board.

e. The Pool covers claims otherwise covered by the Agreement and Plan that are reported to the Pool within six months of the effective date of cancellation or nonrenewal of the Agreement except where the new or renewed Agreement has the same retroactive date or a retroactive date earlier than that of the prior Agreement and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such Agreement renewal or termination date. Claims reported during such extended reporting period are subject to the

terms, conditions, limits, including limits of liability, and exclusions of the Agreement and Plan.

I hereby certify that the wording of this instrument is identical to the wording in APPENDIX XII of 9VAC25-590 and that the Pool is licensed by the Commonwealth of Virginia's State Corporation Commission pursuant to 14 VAC 5-380.

[Signature of Administrator of Pool]

[Type name], Administrator of [name of Pool]

[Address of representative]

## **FORMS**

Virginia Department of Environmental Quality Corporate Ability to Pay Application (7/98)  
(Rev. 7/2002).

Individual Ability to Pay Claim (7/98) (Rev. 7/2002).

Partnership Ability to Pay Application (7/98) (Rev. 7/2002).

Insurance Certification (7/98) (Rev. 7/2002).

Ability to Pay Application Instructions (5/98) (Rev. 7/02).

Ability to Pay Bankruptcy Affidavit (7/98) (Rev. 7/02).

Notice of Intent to Seek Reconsideration (1/1/98) (Rev. 8/27/02).

Reconsideration Claim Form (1/1/98) (Rev. 8/27/02).

Form 1--Virginia Petroleum Storage Tank Fund Reimbursement Application (1/1/98).

Form 2--Virginia Petroleum Storage Tank Fund Payment Assignment Form (1/1/98) [\(Rev. 2/17/99\)](#).

Form 3--Virginia Petroleum Storage Tank Fund Multiple Owners Payment Assignment Form (1/1/98).

AAF Cost Worksheet (1/1/98).

Bid Cost Worksheet (1/1/97) [\(Rev. 1/1/98\)](#).

Activity Authorization Form for 198 UCRs (1/1/98) [\(Rev. 5/23/02\)](#).

Activity Authorization Form for 395 UCRs (1/1/98). [\(Rev. 1/17/00\)](#)

Activity Authorization Form for 1289 UCRs (1/1/98). [\(Rev. 1/17/00\)](#)

Bid Summary Form (1/1/98).

Bid Comparison Form (1/1/98).

Bid Work Progress Form (1/1/98).

Site Information Form (7/98).

Certification of AST Facility Storage Capacity for Access to the Virginia Petroleum Storage Tank Fund (7/98).

Certification of Annual Gallonage (7/98).

STATE WATER CONTROL BOARD  
9 VAC 25-590--Virginia Petroleum Underground Storage Tank  
Financial Responsibility Requirements  
Estate Ability to Pay Application (7/98).

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[VPSTF Substitute IRS Form W-9 \(Rev. 2/17/99\)](#)

[Reconsideration Claim Form Worksheet \(Rev. 8/27/02\)](#)

## **DOCUMENTS INCORPORATED BY REFERENCE**

Circular 570, U.S. Dept. of Treasury.

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